Issued

Govt. II-57—57,004—13-11-45.

Development (1946) Department.

Hs SERIES.

G.O. No. 1575

Dated 16.4.46

[Despatch Abstract.]

Co-operative Societies - Kashaya Industrial Co-operative Society Ltd., Vellore Taluk South Arcot District - Agriculturists Co-operative Wholesale Society Ltd. - Arbitration - Appeal - Rejected

2530/46-B

Before The Government Of Madras.

Developement Department,

Fort St. George, Madras.

In the matter of The Madras Co-Operative Societies Act.

In the matter of the proceedings in R.C.15651/45 B dated 23-1-1946 of the Office of The Joint Registrar Of Co-Operative Societies, Madras.

Keshevji Tulsidas son of Tulsidas Sait)
Merchant, Golikatta Bazar, Mangalore) Petitioner

The petitioner begs to file this revision petition under Sec.57 of The Madras Co-Operative Societies Act against the order aforesaid of the Joint Registrar on the following amongst other grounds:-

The learned Joint Registrar has not given an opportunity to the petitioner to submit his arguments either in person or through a duly appointed legal practitioner.

2. The learned Officer did not even fix a day for the hearing of the appeal and has not assigned any reasons for rejecting the appeal petition and the order itself is very laconic.

3. The petitioner has suffered great injustice as he was not in a position to present his case through lawyer and to explain the law and facts involved in the appeal. It was duly intimated to the Registrar that

lawyer would be engaged as soon as the appeal is set down for hearing, and that vakhalatnama would be produced.

4. The learned Officer ought to have held that the defendent Society having admitted that its accounts are defective and consequent liability to pay atleast a portion of the claim was bound to satisfy the entire claim of the petitioner.

5. The petitioner therefore prays that the Government may be pleased to send for the records in the appeal as well as in the claim No.289/44-45 of The Deputy Registrar of Co-Operative Societies, S.Kanara which was appealed against, and after setting aside the order of The Joint Registrar, send down the appeal for disposal after hearing the petitioner.

Mangalore,)
12-2-46.)

Shiva Ganesh
s/o Krishnaji Tulpule

I, the petitioner abovenamed do hereby declare that the facts stated above are true to the best of my knowledge.

Mangalore,)
12-2-46)

Shiva Ganesh
s/o Krishnaji Tulpule.

Proceedings of the Joint Registrar Of Co-Operative Societies
Madras.

Sri. Rao Bahadur J.C.Royan, M.A., Joint Registrar.

Rc. 15651/45 B dated 23rd.,January 1946.

Order under Section 51 (5) of the Madras Co-Operative Societies Act V1 of 1932.

Sub:- Arbitration-Appeal under Section 51 (5) of the Madras Co-Operative Societies act V1 of 1932-South kanara Agricultural Wholesale Society - Revision petition in claim No. 289/44-45

Read:- 1.Petition dated 2-11-45 from Sri.Keshavji Tulsidas, Merchant,Golikatta Bazar,Mangalore.
2.Endt.No. R.C .3018/45 A dated 17-12-45 from [illegible] Deputy Regostrar, Mangalore.

Order:-

The petition is rejected .

/By order/

(Sd)
M A N A G E R

To Sri Keshavji Tulsidas,Merchant,Golikatta Bazar,Mangalore
MSA/ 29-1.

FIRST ASST. SECRETARY TO GOVERNMENT
121 13B
14 FEB 1946
DEVELOPMENT DEPARTMENT

Development Deptt

Endst. No. 12163 B/46-1 dated 18.2.41

Referred to the Registrar of Cooperative Societies for remarks.

Asst. Secy. to Govt

14.2.41

To the Registrar of Coop. Soc.

Cooperative Department

From (Name) T.P.S.Satthianadhan, M.A., I.C.S.,

Designation Registrar of Cooperative Societies,

Station

Received ..... Registered .....

To

The Secretary to Government, Development Department, Madras.

FIRST ASST. SECRETARY TO GOVERNMENT
20 MAR 1946
DEVELOPMENT DEPARTMENT

Enclosures: (3)

No. Ro.2530/46-1. dated 18--3--1946. 194 .

Sir,

Sub:--A. I. Act --Keshavji Thulsidas Versus the South Kanara Agriculturists' Cooperative Wholesale Society Ltd.---Claim No.289/44-45 Appeal under section 57 of the Madras Cooperative Societies Act.

Ref:--Development Endorsement No.12163-B/46-1, dated 18-2-1946.

The appeal petition sent by Keshavji Thulsidas, merchant, Mangalore, is against the order of the Joint Registrar, rejecting the revision petition against the decision of the Deputy Registrar, Mangalore in claim No.289/44-45 A brief account of the facts of the case is given below:

2. The petitioner is a member of the South Kanara Agriculturists' Cooperative Wholesale Society. He was sending shipments of goods to Bombay for sale by the Bombay branch of the above society, which used to sell his goods and pay him the sale proceeds after deducting a commission of 3% to cover expenses, insurance charges, etc. An arbitration claim was filed by him on 6-3-1945 before the Deputy Registrar, Mangalore claiming a sum of Rs. 3,859-5-5 from the society. He alleged that the society had not accounted for 23 bags of Supari and 2 bags of cinnamon, that it should pay him their value with interest at 6% and that the society should refund the excess commission charged on 2 bags of supari sold on 7-12-1942. The Deputy Registrar, Mangalore, heard the case, examined the parties and gave his decision allowing the claim for the 2 bags of cinnamon and the excess commission charged by the society, and disallowing the claim for 23 bags of supari and for interest at 6% on the value of the 23 bags of supari and 2 bags of cinnamon. The petitioner filed a revision petition against the decision of the Deputy Registrar. It was examined by the Joint Registrar and rejected on its merits.

3. The number of bags of supari was arrived at as 23 by the petitioner in the following way:-

Number of bags of supari unsold at the Bombay branch on 3-11-1942.	173
Number of bags sent by the petitioner from 3-11-42 to 14-7-1943.	2,720
Total.	2,893
Deduct unsold bags according to the statements sent by the society.	1,379
Balance.	1,515
Number of bags accounted for by the society.	1,492
Balance to be accounted for by the society.	23

The petitioner alleged that these bags should have been sold away by the society prior to 3-2-1943 as the balance of unsold stock on 3-2-1943 had been shown by the society as 534 bags whereas it should have been 527 according to the petitioner. The petitioner came aware of this discrepancy on 3-2-1943.

P.T.O.

4. The society filed a written statement before the Deputy Registrar in which it denied that the 23 bags of supari ever existed separately to be disposed of by it. It was stated that the goods were shipped to Bombay, that shortages would occur owing to the gunny bags getting torn in transit and that the goods would be repacked after arrival at Bombay. It was further stated that whenever statements of sale were sent to the petitioner, it was pointed out to him that on account of shortage in each bag, there would be an appreciable shortage in all the consignments together. The petitioner was cross-examined on this point and he admitted the possibility of gunny bags getting torn in transit, and of consequent shortage on this account as well as on account of weather conditions. It was also admitted by him that if the gunny bags got torn in transit, they would have to be restitched at Bombay. The society's representation was that the total shortage in all the consignments came to 23 bags and that it was not a fact that these 23 bags existed separately and were sold away by the society. It also represented that it had lost all the records of the Bombay branch in the explosion that occurred on 14-4-1944, that the petitioner's claim was imaginary and that he had waited till after the Bombay explosion to make his claim.

5. There are two strong reasons to disbelieve the petitioner's contention. The first is his admission that there is a scope for shortage in weight owing to the gunny bags getting torn in ships and also on account of weather conditions and that they will have to be repacked and restitched in Bombay. This admission by the petitioner strengthens the society's plea that the 23 bags represent the shortage in all the consignments together and that the 23 bags did not separately exist as such. Secondly, the petitioner admits that he was aware of this discrepancy from 3-2-1943. The petitioner should have got the discrepancy reconciled immediately. Instead, he waited for 2 years and filed his claim on 6-3-1945. In the meantime, the society lost all its records in the Bombay explosion on 14-4-1944. The discrepancy was known to the petitioner on 3-2-1943 and this knowledge was based on a communication sent by the society before the Bombay explosion which took place on 14-4-1944. The society could not have anticipated the explosion and written down 23 bags in the accounts rendered to the petitioner. It was therefore held that the Deputy Registrar's finding in respect of this item was correct and that it did not require revision.

6. The next point for examination is the question of allowing interest at 6% on the value of the 23 bags of supari and 2 bags of cinnamon alleged to have been sold away by the society. In respect of the value of the 23 bags of supari, the claim for interest does not at all arise and the claim for the value of the Supari itself has been found untenable. As regards the 2 bags of cinnamon the position is this. There was no provision for allowing this *Contra* interest in the rules of the Bombay branch. The petitioner stated that it was an oral understanding and that it was the usual mercantile practice. In the absence of any provision for such interest in the rules of the Bombay branch, the claim for interest at 6% falls and the other arguments of the petitioner do not deserve examination.

7. In this revision petition, the petitioner alleged (i) that the society was taking an undue advantage of the Bombay explosion, (ii) that the plea of shortage was false and (iii) that the fact of repacking was not intimated to him. These three points were examined and it was seen that the change of stock-in-trade due to the occurrence of the explosion was

P.T.O.

mutually levelled against each other by the petitioner and the society, that the society could not have anticipated the explosion when it sent its communication on 3-2-1943 from which the petitioner was able to detect the discrepancy of 23 bags and that therefore the society could not be said to exploit the explosion incident to its advantage. Regarding the question of shortage it was held that after admitting its possibility in cross-examination, the petitioner's allegation that it was false did not merit consideration. As for the third allegation that the society did not intimate to the petitioner the fact of repacking the goods at Bombay the society is not in a position to prove it as its records have been lost in the explosion. It is to the advantage of the petitioner to suppress any such communication if he had received it, and so it was held that this allegation did not carry weight.

8. In his appeal before Government, the petitioner states that he was not permitted to appear in person or through his lawyer, that a day was not fixed for the hearing and that the reasons for the rejection of his revision petition were not stated in the Joint Registrar's Order. There was no necessity to fix a date for hearing the case as there was no point of law involved to permit the petitioner's lawyer to appear for him and argue the case. It is not the practice to state the reasons in orders rejecting such petitions. The petitioner also states that as the society has admitted its defective maintenance of accounts and consequently its liability to pay at least a portion of the claim, the entire claim should have been allowed. This is a false statement. The society has not made any admission that its accounts were defective, nor has it accepted its liability in part or in full.

P.T.O.

9. The appeal forwarded to me in the Development Endorsement cited is enclosed. The following connected records are sent herewith.

(1) (2)

i. Claim file 289/44-45.
ii. D.15651/45.

for REGISTRAR. 19.3.46

r.n.19-3.

19/3/46

Please issue & docket

143/16/4

Cooperative Societies — Keshavji Tulsidas Versus the South Kanara Agriculturists' Cooperative Wholesale Society Ltd

Arbitration — Appeal — Rejected.

Read :— ~~From~~ ~~to~~ Appeal petition from Keshavji Tulsidas dated 12-2-46

Read also : From Rl Res RC 2530/46-B dated 19-3-46

Order — No. No. 1575 dated 16-4-46.

The appeal is rejected.

16/4

SB 17/4

pp 1-3 CF

pp 7-10 CF

Issue and docket 22/4

15-4-46

15/4/46.

To Sri Keshavji Tulsidas,
Son of Tulsidas Sait
Merchant, Gobikatta Bazar,
Mangalore

Copy to Rl Res. ~~with~~ regarding (9) and (10) returned.

Dept Deptt

25/12

Cooperative Societies - Keshavji Tulsidas Versus the South Kanara Agricultural Cooperative Wholesale Society Ltd - Arbitration Appeal -

pp 1 3 CF — Reg: Petition from Keshavji Tulsidas dated 12-2-46
pp 7-10 CF — From the Regs RC 2530/46-13 dated 19-3-46

The file deals with the appeal preferred by Keshavji Tulsidas against the order of the Jt. Regr., pp 1-3 CF
Mangalore
p 23 of (N) rejecting the revision petition filed by him Contesting the decision of the Dy. Regr. in claim no 289/44-45 wherein the pp 55-57 of (X) petitioner had claimed a sum of Rs. 3859-5-5 from the p 18 of (X) South Kanara Agricultural Cooperative Wholesale Society.

The previous history of the case is given in paragraphs 2 to 7 of the Registrar's letter. pp 7-9 CF

In the appeal petition to the govt the petitioner pp 1-3 CF Claims 1) that he had not been allowed to represent the Mem p1 CF case in person or through a lawyer and 2) that the society B Mem p3 CF having admitted that its accounts were defective and consequent liability to pay atleast a portion of the claim was bound to satisfy the entire claim of the petitioner. Rs of both Acts 90 (I & II Bank Manual) Under Sub rule 6 of Rule XV of the Rules under the Coop. Societies act, in proceedings before the Regr, the arbitrator, or body of arbitrators or other person deciding the dispute, legal practitioners shall not be entitled to appear to represent parties. The Regr. states that as there was no point of law involved in the P Mem p 9 CF case it was not necessary to permit lawyer to argue the case As for the petitioner's second contention the D Mem p 9 CF Regr. states that it is false since the Society had never admitted that its accounts are defective nor accepted liability to pay a part of the claim

For orders as to the appeal may be rejected.

May be rejected perhaps
RS

16-4-46 YK 20-4-46

Paragraph 5 of Regs letter on p 2 of I defect is Contradictory. There is no Cat for withdrawal in Rules. PT
Rejected
8-5-46

With reference to orders on pleadings ~~and~~ a draft order is submitted

[illegible]
issued.